

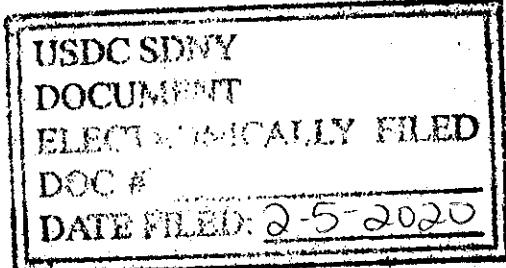
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 13 Cr. 903 (LAP)

v. :

CHARLES FAMILETTI, JR., :

Defendant. :



-----X  
CHARLES FAMILETTI, JR., :

Petitioner, :

19 Civ. 519 (LAP)

: ORDER

v. :

UNITED STATES OF AMERICA., :

LORETTA A. PRESKA, Senior United States District Judge:

The Court is in receipt of Mr. Familetti's letter dated January 27 asking the Clerk of the Court for an update on his motion pursuant to Section 2255. As set out in the Court's orders dated April 9, 2019 (dkt. no. 139) and June 4, 2019 (dkt. no. 140) (copies attached), Mr. Familetti was notified that "the

Court will not be able to consider his motion pursuant to 28 U.S.C. § 2255 on the basis of ineffective assistance of counsel" unless and until he executes and returns a copy of the "Attorney-Client Privilege Waiver (Informed Consent)" form (copy also attached). If and when Mr. Familetti returns the executed form, the Court will be in a position to move forward with the motion.

The Clerk of the Court shall mail a copy of this order and dkt. nos. 139 and 140 with attachments to Mr. Familetti.

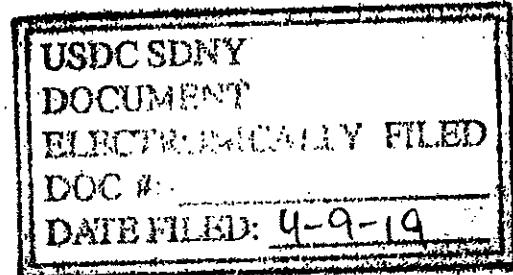
SO ORDERED.

Dated:      New York, New York  
                February 5, 2020

  
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LORETTA A. PRESKA  
Senior United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Petitioner, : 19 Civ. 519 (LAP)  
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UNITED STATES OF AMERICA., :  
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LORETTA A. PRESKA, Senior United States District Judge:

As the Government points out in its letter dated April 8, 2019 [dkt. no. 9], Mr. Familetti has not yet returned the "Attorney-Client Privilege Waiver (Informed Consent)" form. Unless and until Mr. Familetti does so, the Court will not be able to consider his motion pursuant to 28 U.S.C. § 2255 on the

basis of ineffective assistance of counsel. In order for the Court to consider his petition, Mr. Familetti shall return an executed copy of the waiver form no later than May 9, 2019.

SO ORDERED.

Dated: New York, New York

April 9, 2019

  
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LORETTA A. PRESKA  
Senior United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHARLES FAMILLETTI, JR., :  
Petitioner, :  
- v. - : 13 Cr. 903 (LAP) /  
: 19 Cv. 519 (LAP)  
UNITED STATES, :  
: :  
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**Attorney-Client Privilege Waiver (Informed Consent)**

**To: Defendant Charles Familetti, Jr. (Reg. No. 68934-054):**

You have made a motion based, in part, on the ground that you received ineffective assistance from your former appellate lawyer, Jerald Brainin, Esq. ("your former attorney"). The Court has reviewed your papers and determined that it needs your former attorney's testimony in order to evaluate your motion.

By making this motion, you have waived the attorney-client privilege you had with Mr. Brainin to the extent relevant to determining your motion. This means that if you wish to press your motion, you cannot keep the communications between yourself and your former attorney a secret—you must allow them to be disclosed to the Government and to the Court pursuant to court order. The Court has already issued an Order (copy attached) ordering Mr. Brainin to provide an affidavit to the Government. Additionally, the Government may discuss with Mr. Brainin communications between him and you regarding your criminal case and subsequent appeal, consistent with your waiver of the attorney-client privilege by making your motion. This Informed Consent form is designed to ensure that you fully understand and agree to this.

If you wish to proceed with your motion, you must sign this statement and return it to the Court. The form constitutes your authorization to your former attorney to disclose confidential communications: (1) in response to a Court order; and (2) to the extent necessary to shed light on the allegations of ineffective assistance of counsel that are raised by your motion.

You should know that if you sign this authorization, you run the risk that your former attorney will contradict your statements about his or her representation of you. However, you should also know that the Court will deny your motion if you do not authorize your former attorney to testify in this matter.

You must return this form, signed by you, within seven days of the date of the accompanying Order. If the Court does not receive this form, signed by you, within that time, the Court will automatically deny your motion.

**AUTHORIZATION**

I have read the Court's Order dated March \_\_\_\_\_, 2019 and this document headed Attorney-Client Privilege Waiver (Informed Consent). I hereby authorize my former appellate counsel, GerJerald Brainin, Esq., to testify in this matter only pursuant to court order, and only to the extent necessary to shed light on the allegations of ineffective assistance of counsel that are raised by my motion.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Charles Familetti, Jr.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 13 Cr. 903 (LAP)

v.

CHARLES FAMILLETTI, JR., :

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USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 6/4/19

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19 Civ. 519 (LAP)

v.

UNITED STATES OF AMERICA., :

ORDER

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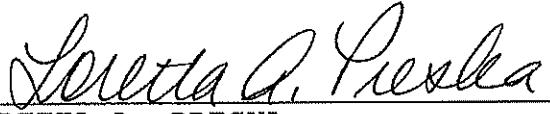
LORETTA A. PRESKA, Senior United States District Judge:

In its Order dated April 9 [dkt. no. 10], the Court notified Mr. Familetti that the Court could not consider his motion pursuant to 28 U.S.C. § 2255 until he executes and returns the Attorney-Client Privilege Waiver form and ordered him to do so by May 9. He has not done so. Accordingly, Mr.

Familetti's motion pursuant to 28 U.S.C. § 2255 is dismissed without prejudice.

SO ORDERED.

Dated: New York, New York  
June 4, 2019

  
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LORETTA A. PRESKA  
Senior United States District Judge